

Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V MICHAEL OTIS SLONE

Docket No. 297682

LC No. 09-029628-FH

Karen M. Fort Hood
Presiding Judge

Michael J. Talbot

Christopher M. Murray
Judges

In lieu of granting the delayed application for leave to appeal, pursuant to MCR 7.205(D)(2), we VACATE the March 26, 2010 judgment of sentence and remand for resentencing. A trial court may depart from the sentencing guidelines range if it has a substantial and compelling reason for that departure and the reasons for the departure are stated on the record. MCL 769.34(3); *People v Buehler*, 477 Mich 18, 24; 727 NW2d 127 (2007). The substantial and compelling reasons must be objective and verifiable and exist only in exceptional cases. *People v Smith*, 482 Mich 292, 299; 754 NW2d 284 (2008). Substantial and compelling reasons must be of considerable worth and should keenly or irresistibly grab the court's attention. *Id.* To justify a departure, the minimum sentence imposed must be proportionate to the defendant's conduct and prior criminal history. *Id.* at 300. Factors included in the computation of the guidelines do not support a departure unless the court finds that the factor has been given inadequate or disproportionate weight. *Id.*

At sentencing, the trial court stated that it was departing below the guidelines because defendant was on parole at the time of his felony convictions. The trial court provided additional written reasons on the departure form. However, the desire to be rehabilitated and any remorse for the offenses are not objective and verifiable. Defendant did not demonstrate success while on parole because he committed his three felony convictions in this case while on parole. He has not demonstrated the ability to be rehabilitated in light of his extensive criminal history and his status as a fourth habitual offender. Therefore, we vacate the judgment of sentence and remand for resentencing.

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 23 2010

Date

Sandra Schultz Mengel
Chief Clerk